DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-201084 and B-201085 **DATE:** October 9, 1981

MATTER OF: Dwain L. Baxter and H. Russell Hunter

DIGEST: FAA employees assigned to remote radar site at Sawtelle Peak, Idaho, are entitled to be compensated for travel time to and from Ashton, Idaho, where employees are required to pick up and return Government vehicles and other special purpose vehicles necessary to negotiate route to radar site. This duty is an inherent part of and inseparable from their work and is compensable as hours of work under 5 U.S.C. § 5542(b)(2).

By letters dated June 2, 1980 and May 23, 1980, Messrs. Dwain L. Baxter and H. Russell Hunter, employees of the Federal Aviation Administration (FAA), Western Region, appeal the determination of our Claims Group, dated April 10, 1980, which disallowed their claims for additional overtime compensation for the period January 1967, to December 1974. The claims are for overtime compensation under the provisions of the Federal Employees Pay Act of 1945, as amended, 5 U.S.C. § 5542 (1970), for time spent in a standby duty status at the Sawtelle Peak, Idaho, radar facility. The employees were found to have been entitled to overtime compensation and were paid in August 1975. The essence of the present appeal is that travel time, under the circumstances to be enumerated below, should also be considered compensable time in calculating the employees overtime.

For the reasons which follow, we believe the travel time should be considered compensable hours of work, and the employees are, therefore, due additional compensation.

The FAA paid both claimants for the overtime duty based on a formula approved by our Office. The formula equated standby time to the total elapsed time minus the hours for which the claimants had already been compensated with regular or overtime pay, minus 8 hours for each 24-hour period in accordance with the two-thirds rule, under which an employee who is required

to remain for a 24-hour period at his duty station in a standby status is entitled to compensation for 16 of those hours. Under the two-thirds rule, time spent sleeping or eating, during which no substantial labor is performed, is not compensable. See B-170264, December 21, 1973. We note that the FAA excluded travel time from the total elapsed time in its computation of the amount due the claimants, whereas the claimants included that time in their original claims. For that reason Mr. Baxter and Mr. Hunter now claim additional compensation of $4,916.23, and $4,713.41, respectively, for the time spent traveling in Government-owned vehicles from the pickup site in Ashton, Idaho, to the work site, and return.

In its computation of the hours of standby time, the FAA began the total elapsed time with the employees' arrivals at the long range radar site, and ended it with their departures from the site. However, it appears that the duty hours which the FAA subtracted from the total elapsed time were the total duty hours, including the hours spent traveling to and from the site. In effect, this offset the travel time against the standby overtime. Therefore, the formula applied by the FAA might be expressed as: the total hours at the radar site minus hours at the site for which the claimants have previously been compensated, minus 8 hours per 24-hour period at the site, and minus hours spent traveling to and from the site in a Government-owned vehicle.

The FAA's administrative report addressed the question of when tours of duty for the long range radar sites begin and end. The employees at Sawtelle Peak are required to use a Government vehicle because road conditions are such as to cause excessive wear and tear on vehicles or to require a special purpose vehicle (snowcat, four-wheel drive, etc.). The employee must report to a designated point to pick up the vehicle and return it to that point so that it can be used by others. In these cases, this is an inherent part of the employee's work and the pickup point becomes a check-in point and is designated as part of their duty station. Therefore, it was administratively determined by the FAA on August 26, 1974, in a letter to Regional Directors

from the Acting Associate Administrator for Administration that the employees' tours begin at the time they report to the check-in point and end when they return the vehicle to that point.

The official pickup point for Messrs. Baxter and Hunter was established by FAA Order NW 4670.1, June 16, 1975, as Ashton, Idaho, a distance of approximately 49 miles from Sawtelle Peak. The FAA has recommended denial of the claims because: (1) it was not until August 26, 1974, that an offical determination was made as to when tours of duty for long range radar sites began and ended; (2) it was not until June 16, 1975, that Ashton, Idaho, was designated an official pickup point; (3) the Sawtelle Peak did not qualify for a remote worksite allowance; and (4) all due entitlement was paid to the claimants in August 1975. We disagree.

Section 5542(b)(2) of Title 5 of the U.S. Code (1970), as amended, states the following with respect to compensating an employee for time spent in travel:

> "(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--
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> > (A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or
> >
> > (B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

There is no doubt that under section 5542(b)(2)(A) an employee having a regularly scheduled workweek must be compensated for time spent in travel on official business which is within regularly scheduled work hours.

Artis Holcomb, B-194297, August 22, 1979. The difficult question here is the application of section 5542(b)(2)(B) to these claims.

The Civil Service Commission (now Office of Personnel Management), has explained the limited conditions in section 5542(b)(2)(B), under which traveltime is considered hours of work, in section 3(2) of subchapter S1, Federal Personnel Manual (FPM) Supplement 990-2, Book 550. However, subparagraph (c)(v) of section 3(b)(2) of the FPM states that those conditions are not applicable in certain circumstances, as follows:

> "(v) The above conditions do not apply to work situations involving travel which is an inherent part of, and inseparable from, the work itself. In such events when an agency determines that the travel represents an additional incidental duty directly connected with the performance of a given job, and is therefore considered to be an assigned duty, the time spent in travel is work time and will be payable at regular or overtime rates, as appropriate. (See Comptroller General decisions B-146389, February 1, 1966, and B-163042, May 22, 1968.)"

Our decisions B-146389, February 1, 1966, and B-163042, May 22, 1968, which relied on B-143074, September 29, 1960, sanctioned the agency practice of treating as compensable traveltime, travel which is an inherent part of and inseparable from the work itself. In B-143074, supra, we held it was proper for the Army to prescribe by regulation that the traveltime of a survey party between assembly point and survey site was inherent to the work at the survey site and was thus compensable as work. In B-146389, supra, we approved FAA regulations which stated that employees who reported to headquarters, received assignments, picked up vehicles, tools, and supplies, and then traveled to one or more facilities for maintenance work, may be paid compensation for such traveltime. The FAA found that the traveltime was a part of the employee's established tour of duty.

The same principle outlined above of treating as compensable travel time travel which is an inherent part of and inseparable from the work itself is applicable here. The record shows that as early as 1965, the employees were using Government vehicles to travel to and from Sawtelle Peak to Ashton, Idaho. Thus, the official determination as to when the tour began in 1974, and the designation of Ashton as an official pickup point, appears to merely clarify that which had been a standard practice for many years. The administrative report, while recommending denial of the claim on the one hand, also states; "that travel to the site was supposed to be performed during duty hours."

Accordingly, we conclude, as we did in B-143074 and B-146389, supra, that in these circumstances, the travel time was an inherent part of and inseparable from the work itself. Hence it is compensable under 5 U.S.C. § 5542(b)(2)(B)(i). Therefore, the FAA computation based on the exclusion of the travel time from the total elapsed time is in error.

The claims of the two Sawtelle Peak employees are returned to our Claims Group for a determination of the amounts due, either by Claims Group or the agency as appropriate. Payment may also be made in accordance with the above to other employees similarly assigned to the Sawtelle Peak radar facility, provided that the claims were received in this Office within the limitations period in 31 U.S.C. § 71(a) (1976).

Milton J. Socolar

Acting Comptroller General
of the United States